UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

EDWARD C. HUGLER, Acting Secretary of Labor, United States Department of Labor,	:	
	:	Misc. Action No.
Petitioner,	:	
v.		
	:	
MANGANO SEWER AND DRAIN, INC. and JONATHAN MANGANO, individually and as custodian of records,	:	**DECLARATION OF ELENA GOLDSTEIN**
	:	
Respondents.		

DECLARATION OF ELENA GOLDSTEIN

I, **ELENA GOLDSTEIN**, declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the following is true and correct:

I make this Declaration based upon my personal knowledge of the facts and having reviewed the official files of the U.S. Department of Labor.

1. I am a Senior Trial Attorney in the Office of the Solicitor, U.S. Department of Labor located at 201 Varick Street, Room 983, New York, New York 10014. I am fully familiar with the facts and proceedings herein.

2. I make this declaration in support of the Acting Secretary of Labor's Petition to Enforce the Administrative Subpoenas *Duces Tecum*.

3. On or about February 8, 2017, I was informed by the Wage and Hour Division, Long Island District Office that Respondents had not fully complied with the administrative subpoenas *duces tecum* that were served on January 25, 2017.

4. On February 10, 2017, I called William G. Goode, counsel for Respondents. Mr.

Goode assured me that Respondents would produce the requested documents by February 14, 2017.

5. On March 3, 2017, I sent a letter by first class mail and fax to Mr. Goode. This letter requested, *inter alia*, full compliance with the subpoenas no later than March 10, 2017. A true and accurate copy of this letter is attached as Exhibit 1.

6. On March 13, I again spoke to Mr. Goode and requested that his clients produce all responsive documents. Mr. Goode advised me that his clients were "going to do what they [were] going to do."

7. As set forth in the declaration of Investigator Jenna Montesano, Respondents have not produced all responsive documents. At this time, it does not appear that further efforts to obtain compliance without assistance from the Court will be productive.

I declare that the forgoing is true and correct. Executed on this 31st day of March 2017, New York, New York.

ELENA GOLDSTEIN
Senior Trial Attorney
U.S. Department of Labor
Office of the Solicitor

Exhibit 1

U.S. Department of Labor

Office of the Solicitor
201 Varick Street
New York, New York 10014

Reply to the Attention of: SOL:ESG
Tel. (646) 264-3686

March 3, 2017

Via Fax and First Class Mail

William G. Goode, Esq.
20 Peachtree Court, Suite 103C
Holbrook, New York 11741

Re: Mangano Sewer & Drain

Dear Mr. Goode:

As you are aware, the United States Department of Labor (the "Department") is currently conducting an investigation of Mangano Sewer & Drain, Inc., Jonathan Mangano, and related business entities (collectively, "Mangano") pursuant to the Fair Labor Standards Act ("FLSA"). Following the initiation of this investigation, Mangano made numerous efforts to obstruct the Department's work, refusing to produce subpoenaed documents and retaliating against workers to silence them in the face of the Department's investigation. Mangano's interference with the Department will subject Mangano to further liability under the law; the Department writes to demand that Mangano comply with the subpoenas and cease its retaliatory conduct immediately.

First, your clients have failed to comply with the Department's subpoenas. As you are aware, Mangano was required to respond to these subpoenas on or before February 9, 2017. As of today, your clients have failed to provide the vast majority of responsive documents, including (1) complete time and payroll information, (2) tax forms, and (3) documents reflecting the names and addresses of Manago Sewer & Drain Inc.'s owners and employees. In addition, the subpoena requires that Mangano produce (4) records relating to related business entities. This request includes, *inter alia*, documents relating to Emergency Cesspool & Sewer Cleaners Inc., a nominally-distinct corporate entity that employs Mangano's employees to perform substantially-similar work. Your clients have failed to produce *any* documents relating to this entity.

To the extent that your clients do not possess documents responsive to a particular request in the Department's subpoena, kindly provide a written statement affirming that such documents do not exist. If necessary, please ensure that Mangano obtains responsive documents from its payroll service. Particularly given Mangano's use of an outside payroll company and electronic timekeeping system, it is clear that their document production thus far is grossly inadequate.

In the event that Mangano fails to produce all responsive documents by Friday, March 10, 2017, the Department may be forced to take further legal action. It is well-established that the Department can, if necessary, enforce this subpoena in federal court. *See, e.g., Donovan v. Mehlenbacher*, 652 F.2d 228, 230 (2d Cir. 1981). Moreover, particularly in light of Mangano's retaliatory conduct as set forth below, their failure to comply with the government's basic request for documents constitutes impermissible obstruction of the Department's investigation in violation of 29 U.S.C. § 211(a).

In addition, Mangano must immediately cease its retaliatory and intimidating conduct against its current or former employees. Almost immediately after Mangano received the Department's subpoenas, Mangano terminated multiple employees. Such conduct raises a clear inference of retaliation in violation of the Act. *See, e.g., Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010) (retaliatory animus shown by temporal proximity between adverse action and protected activity). Likewise, harassment of former employees, including contact with workers' subsequent employers, constitutes unlawful retaliation. *See, e.g., Thompson v. Morris Heights Health Ctr.*, No. 09 CIV. 7239 PAE THK, 2012 WL 1145964, at *6 (S.D.N.Y. Apr. 6, 2012); *Martin v. Albany Bus. Journal, Inc.*, 780 F. Supp. 927, 938 (N.D.N.Y. 1992).

Moreover, Mangano's efforts to use patently-unenforceable contractual provisions to intimidate and threaten workers plainly runs afoul of the FLSA's anti-retaliation provisions. During our telephone call on February 10, 2017, you indicated that Mangano had requested that counsel draft "show cause" papers to institute legal action against a former Mangano employee. It is well-established that confidentiality or anti-disparagement agreements are contrary to public policy where they interfere with workers' ability to discuss their hours worked or wages paid. *See, e.g., Lopez v. Ploy Dee, Inc.*, No. 15-CV-647 (AJN), 2016 WL 1626631, at *3 (S.D.N.Y. Apr. 21, 2016) (holding that confidentiality and non-disparagement provisions "can be contrary to public policy because they prevent the spread of information about FLSA actions to other workers...who can then use that information to vindicate their statutory rights"); *Lazaro-Garcia v. Sengupta Food Servs.*, No. 15-CV-4259 (RA), 2015 WL 9162701, at *3 (S.D.N.Y. Dec. 15, 2015) (such provisions are "in tension with Congress's broader goal of ensuring widespread compliance with the statute" and cannot contravene the remedial purposes of the FLSA). Indeed, since suits against employees send "a strong message" that claims against an employer will result in litigation against those workers, efforts to enforce confidentiality or non-disparagement policies against workers seeking to vindicate their FLSA rights constitute unlawful retaliation. *See Jian Zhong Li v. Oliver King Enterprises, Inc.*, No. 14-CV-9293 VEC, 2015 WL 4643145, at *3 (S.D.N.Y. Aug. 4, 2015) (instituting "groundless" or "bad faith" litigation against an employee "constitutes actionable retaliation"); *Torres v. Gristede's Operating Corp.*, 628 F. Supp. 2d 447, 473 (S.D.N.Y. 2008).

Mangano's conduct may subject it to further liability under the FLSA. *See, e.g., Sines v. Serv. Corp. Int'l*, 03 CIV. 5465 (SC), 2006 WL 3247663, at *4 (S.D.N.Y. Nov. 8, 2006) (affirming award under FLSA of $130,000 in punitive damages for defendants' retaliatory conduct); *Lai v. Eastpoint Int'l, Inc.*, 99 CIV 2095(DLC), 2002 WL 265148 (S.D.N.Y. Feb. 22, 2002) (awarding more than $40,000 in compensatory damages for emotional distress arising out of defendants' retaliatory conduct). Accordingly, please ensure that your clients immediately cease their retaliatory and obstructionist conduct.

Please do not hesitate to contact me if you have any questions. We look forward to receiving all responsive documents by March 10, 2017.

Sincerely,

Jeffrey S. Rogoff
Regional Solicitor

By: /s
Elena Goldstein
Senior Trial Attorney